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# Jurisdiction in Personam Over Nonresident Corporations

Billy J. Tauzin

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presumption of an intention to forgive and continue the relationship. The conclusion that must be drawn from all the facts is that the offended spouse intended to forgive the other spouse *and* to renew or continue the marital relation. Thus, where a single act of sexual intercourse is engaged in, and the facts show that the offended spouse never intended to continue the marital situation, there should not be an extinguishment of the action for separation based on reconciliation of the parties.

Cary G. deBessonet

#### JURISDICTION IN PERSONAM OVER NONRESIDENT CORPORATIONS

A Louisiana resident injured while employed on an oil rig in the Persian Gulf brought a workmen's compensation action against his employers, several Panamanian oil corporations, in a Louisiana court. The oil companies had recruited employees, including the plaintiff, in Louisiana to work on an oil rig built and repaired in Louisiana for operation in the Persian Gulf; but the companies had neither qualified to do business in Louisiana nor consented to be sued there. The trial court sustained defendants' exceptions to its jurisdiction in personam. The Third Circuit Court of Appeals reversed. *Held*, defendants' "business activity" within Louisiana had been sufficient to give the state's courts jurisdiction under La. R.S. 13:3471 (1) extending Louisiana's personal jurisdiction over nonresident corporations. *Babineaux v. Southeastern Drilling Co.*, 170 So. 2d 518 La. App. 3d Cir. (1965), *writs refused*: "The ruling on the plea to the jurisdiction in personam is correct." 247 La. 613, 614, 615, 172 So. 2d 700, *appeal dismissed* for want of a substantial federal question, 382 U.S. 16.<sup>1</sup>

In *International Shoe Co. v. Washington*,<sup>2</sup> the United States Supreme Court recognized that a state could, without violating due process, require a foreign corporation to defend a suit in its courts if the corporation had sufficient minimum contacts with the state so that maintenance of the suit would not offend "traditional notions of fair play and substantial justice."<sup>3</sup> The

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1. See *The Work of the Louisiana Appellate Courts for the 1964-1965 Term - Civil Procedure*, 26 LA. L. REV. 581 (1966).

2. 326 U.S. 310 (1945). See Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 361, 391 (1966).

3. 326 U.S. 310, 316 (1945).

court reasoned that if the corporation exercised the privilege of transacting business within the state, enjoying the benefits and protection of its laws, it should be subject to the corresponding obligation of defending in that state suits arising out of its activity.<sup>4</sup> It was implied in that decision that a single act might constitute a sufficient contact.<sup>5</sup> Precisely that situation faced the Court in *McGee v. International Life Ins. Co.*<sup>6</sup> In upholding state jurisdiction over a foreign insurance corporation that had issued a single reinsurance contract through the mails to one resident, the Court emphasized the connections between the single business act and the state: delivery of the policy in the state, mailing of premiums from the state, the residence of the insured in the forum state at his death.<sup>7</sup> The Court also stressed the state's interest in providing a forum for its residents to assert their claims against reluctant foreign insurers, observing that to force the insured and his witnesses to pursue the insurer to its home state would in effect deny the claimant his legal remedy, and concluding that the relative inconvenience to the insurer in defending an action in the forum state was not a denial of due process.<sup>8</sup>

But the Court has insisted that convenience alone is insufficient basis for jurisdiction. In *Hansen v. Denckla*,<sup>9</sup> the Court found insufficient contacts where a trust settlor had moved to the forum state after creating the trust, and the trust company had mailed income checks and other communications to her there. The Court stated: "It is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws."<sup>10</sup> Only after such contacts are established is convenience of the forum a proper consideration.<sup>11</sup>

As the Supreme Court broadened the area of possible state exercise of personal jurisdiction, the Louisiana legislature re-

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4. *Id.* at 319.

5. *Id.* at 318.

6. 355 U.S. 220 (1957). See Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 392 (1966).

7. 355 U.S. 220, 223 (1957).

8. *Ibid.*

9. 357 U.S. 235 (1958). See Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 393 (1966).

10. 357 U.S. 235, 253 (1958).

11. *Id.* at 250.

sponded, broadening the statutes relating to personal jurisdiction over nonresident corporations. In 1950 the Louisiana statute providing for service of process on foreign corporations<sup>12</sup> was amended in the light of *International Shoe* to provide for jurisdiction over a foreign corporation when the corporation "has engaged in business activities in this State through acts performed by its employees or agents in this State,"<sup>13</sup> in all causes of action resulting from these acts. But the expansion was not so great as originally supposed. The courts found themselves restricted by two phrases: "engaged in business activities," and "performed by its employees or agents." Because the plural "activities" was used, the courts required intrastate activity of a continuous nature,<sup>14</sup> and because the statute specified "employees or agents," jurisdiction was denied for failure to discover an employee or agency relationship.<sup>15</sup>

To take advantage of the latitude afforded by *McGee*<sup>16</sup> the Louisiana statute was again amended in 1960. Now appearing as La. R.S. 13:3471 (1), the statute grants jurisdiction over a foreign corporation that has "engaged in a business activity in this state"<sup>17</sup> on a cause of action resulting from that activity. The requirements that the business activities be continuous and systematic or performed in Louisiana by a corporation's employees or agents are eliminated. It was under this 1960 amendment and against the background of *Denckla*, *McGee*, and *International Shoe* that the instant case arose.

Because the question of sufficiency of the business activity for personal jurisdiction over nonresident corporations is one of law and fact which must be determined on the circumstances of each case,<sup>18</sup> the instant case turned primarily on interpretation of the facts. The facts must therefore be set forth with some detail.<sup>19</sup>

The recruitment of employees began when the defendants advertised in a Louisiana paper for workers to report to a Lou-

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12. LA. R.S. 13:3471(5) (d) (1950).

13. *Ibid.*

14. See *Johnson v. El Dorado Creosoting Co.*, 71 So.2d 613 (La. App. 2d Cir. 1954).

15. See *Stanga v. McCormick Shipping Corp.*, 268 F.2d 544 (5th Cir. 1959).

16. See Explanatory Note, LA. R.S. ANN. 13:3471 (West, Supp. 1965).

17. LA. R.S. 13:3471(1) (1950), as amended, La. Acts 1960, No. 32, § 1.

18. See *Nigro v. Cessna Aircraft Co.*, 169 So.2d 594 (La. App. 4th Cir. 1964).

19. Although the instant case involved other defendants and other issues, this Note is limited to the issue of in personam jurisdiction, and only those facts relevant to that issue are set forth.

isiana motel for interviews. During the three days of interviews at the motel, defendants' agent took plaintiff's application and placed it in a potential employee pool from which they and other companies could draw as the need arose. Defendants later selected plaintiff from the pool and notified him to report to Dallas, Texas, where he received his employment contract. Plaintiff executed the contract in Louisiana, and mailed it to Texas. After plaintiff had reported, as ordered, to certain New Orleans physicians for a physical examination and overseas inoculation, defendants completed the contract in Texas and mailed it to plaintiff along with a travel allowance, passport, plane ticket, and itinerary for the trip to defendants' oil field in Kuwait. Plaintiff flew to Kuwait from New Orleans. Ten days later he was injured in Kuwait, and promptly returned to Louisiana. Defendants also hired other Louisiana workmen as a result of the Louisiana activity.

It was disputed whether defendants maintained an office in Texas, or only in Kuwait; it was also disputed whether plaintiff's pay commenced after his physical examination in New Orleans, but it was certain that the pay commenced at least on the day of his departure.

Defendants asserted that to meet the minimum contracts test the activities of the nonresident must be both continuous and systematic rather than sporadic or non-recurring. The Louisiana cases supporting this defense,<sup>20</sup> however, had been decided prior to the 1960 amendment of La. R.S. 13:3471 (1). Other cases were distinguished as having been decided under the old test of "doing business."<sup>21</sup> The court stressed that under the *McGee* liberalization of personal jurisdiction which was embodied in the 1960 act, all that is necessary to meet the requirement of minimum contact is "a business activity" in the state. It is no longer necessary to discover activities of a continuing and systematic nature.

Judge Tate, for the majority, reasoned that although defendants had merely participated by financial support in the creation of an employee pool from which many companies could draw, the practical effect of the hiring practices was the same

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20. *Stanga v. McCormick Shipping Corp.*, 268 F.2d 544 (5th Cir. 1959); *Wyss v. Good Hope Placers, Inc.*, 106 So. 2d 10 (La. App. 1st Cir. 1958).

21. See cases cited at 170 So. 2d 518, 526, 527. See generally Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350 (1966).

as though defendants had personally come into Louisiana to advertise, and to interview and select plaintiff for their Kuwait operations. Since they had voluntarily and purposefully taken advantage of the benefits and protection of the laws of Louisiana in their recruiting activities, it became their consequent duty to answer suits in Louisiana courts enforcing obligations arising out of or connected with those activities. Judge Tate forcefully described Louisiana's interest in providing a forum for plaintiff by noting that after plaintiff's injury he was returned home "now crippled and in need of medical attention, possibly a charge upon the public of Louisiana unless he can effectively pursue his compensation remedy."<sup>22</sup> The majority therefore felt that the contacts as well as the resulting relationship between the defendant corporations and the state were sufficient to sustain jurisdiction under the minimum contacts test. In considering *Hanson v. Denckla*, not only did the court find greater contacts than in *Denckla*, but found that the facts met the test laid down in *Denckla*: the defendants were *purposefully* and *voluntarily* in Louisiana in the interest of their business affairs.

In a strong dissent Judge Hood argued that the contacts were insufficient because they were less than those found in *McGee*. In his view, the only contacts defendants had with Louisiana were the advertisements in the Louisiana paper and the interview in the Louisiana motel; and, in both cases, defendants' only connection with these activities was in paying a proportionate part of the expense. Judge Hood did not consider plaintiff's physical examination in New Orleans or his boarding a plane there as contacts by defendants with the state of Louisiana. Nor did he consider the fact that plaintiff's pay commenced in Louisiana on the day of his departure as compelling the conclusion that any part of plaintiff's employment was performed in Louisiana or that defendants had conducted any of their business operations in Louisiana. Judge Hood felt that the contacts were more in line with those of *Denckla*, and urged that Texas, rather than Louisiana, was the proper forum for plaintiff's suit. He found that, unlike *McGee*, the defendants' contract with the plaintiff was not executed in Louisiana,<sup>23</sup> the plaintiff did not remain in Louisiana and continue to have busi-

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22. 170 So. 2d at 518, 524.

23. For a discussion of the importance of this factor see Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 376 (1966).

ness relations with the defendant after the execution of the contract, and the plaintiff would not be effectively denied his right to have his claim adjudicated if Louisiana did not exercise jurisdiction over it.

Judge Hood felt that Texas would be the proper forum state because the contract was executed in Texas, the defendants, he believed, maintained an office in Texas, and the contract expressly provided that Texas workmen's compensation law should apply. In balancing the inconveniences so as not to offend "traditional notions of fair play and substantial justice" Judge Hood thought it would be as inconvenient for the defendants to defend suit in Louisiana as for the plaintiff to prosecute his claim in Texas, and therefore urged that the principles of *Pennoyer v. Neff*<sup>24</sup> be applied to support Texas rather than Louisiana jurisdiction.

The majority, however, were reluctant to turn plaintiff away in the hope that Texas would afford him relief. They did not share Judge Hood's view that the defendants maintained an office in Texas, but argued that the only office defendants maintained was in Kuwait. Further, they expressed the view that as long as there was sufficient business contact to support Louisiana jurisdiction, there was no need to examine the convenience of suit in any other state, whether next door or a "continent away."<sup>25</sup> They further reasoned that Texas might not have a statute broad enough to permit it to exercise personal jurisdiction over the defendants;<sup>26</sup> and that in a Texas suit, an argument could be made that Louisiana was the proper forum state.

Despite defendants' argument to the contrary, the majority of the court found a "direct relationship" between the Louisiana plaintiff's cause of action for his injury in Kuwait and the substantial business activity of foreign employers in Louisiana. The cause of action was based upon the employment relationship arising from the defendants' Louisiana activities: advertising, interviewing, taking of applications, and having medical examinations made — all in the successful attempt to hire Lou-

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24. 95 U.S. 714 (1878). *Pennoyer* stands for the principle that service of process on a nonresident defendant must be effected within the forum state. See Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 352, 389 (1966).

25. 170 So. 2d at 518, 525.

26. See TEX. REV. CIV. STAT. art. 2031a (1943).

isiana workmen, including plaintiff. The majority distinguished cases of lesser causal relation,<sup>27</sup> and observed that Louisiana jurisdiction had been sustained on less direct relationship between the activity and the cause of action than was evident in the instant case.<sup>28</sup>

The opposing judicial views are attributable to the difference of qualitative standards for the determination of sufficient minimum contacts. If Judge Hood's yardstick is proper, the instant case is an extreme application of the minimum contacts rule, perhaps the extreme limit beyond which jurisdiction cannot be maintained. Yet if Judge Tate's qualitative standards are valid, the instant case was only a routine application of the *McGee* standard. The fact that the Supreme Court which had decided *McGee* and had decided *Denckla* dismissed the appeal in the instant case for "want of a substantial federal question"<sup>29</sup> and that Justice Harlan went so far as to urge that the appeal be dismissed for "want of jurisdiction"<sup>30</sup> supports the conclusion that the outer limits of the 1960 procedural statute have yet to be defined.<sup>31</sup>

Billy J. Tauzin

#### WRONGFUL DEATH — HUSBAND'S RIGHT TO RECOVER THE LOSS OF PECUNIARY BENEFITS RESULTING FROM THE DEATH OF HIS WIFE

The plaintiff sued on behalf of himself and his minor son in federal district court under diversity of citizenship for the loss

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27. See cases cited 170 So. 2d at 518, 527.

28. See *Covington v. Southern Specialty Sales Co.*, 158 So. 2d 79 (La. App. 1st Cir. 1963), where the defendant nonresident manufacturer had purposely entered Louisiana in connection with the sales of mowing machines, one of which injured plaintiff. The defendant had a representative come to Louisiana every four or five weeks to supply technical aid, information, and assistance in ordering defendant's products. This activity was not directly connected with the sale to the retailer of the specific machine which injured plaintiff after the retailer sold it. Yet Louisiana was held to have jurisdiction where the cause of action was merely indirectly connected with the minimal business activity.

29. 382 U.S. 16 (1965).

30. *Ibid.*

31. See LA. R.S. 13:3201-3207 (Supp. 1964). This statute, commonly called the "Louisiana long-arm statute," enumerates in some detail the types of activity sufficient to sustain personal jurisdiction over nonresident defendants, and applies to all nonresidents rather than to corporations alone as does LA. R.S. 13:3471(1) (1950). Since the instant case involved a suit for workmen's compensation, which is classified as an action *ex contractu*, it seems the case could have been disposed of under the contractual provision of the "long-arm statute," LA. R.S. 13:3201(a) (Supp. 1964).